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89-1068

Supreme Court, U.S.
FILED
JAN 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO.

SUPREME COURT OF THE UNITED STATES.

October Term, 1989.

JEAN ROSENBAUM,

Petitioner, acting Pro Se,

vs.

RICHARD ROSENBAUM, and

ANN P. ROSENBAUM,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI

to the

APPELLATE COURT OF ILLINOIS,

First District.

Jean Rosenbaum, Pro Se.

1354 West Greenleaf Street.

Chicago, Illinois 60626.

973-6047 (312).

ON PETITION FOR WRIT OF CERTIORARI to the APPELLATE COURT OF ILLINOIS, First District.

(In this document, Petitioner, JEAN ROSENBAUM, is referred to as "Mother;" Respondent, RICHARD ROSENBAUM is referred to as "Son.")

(a) Questions presented for review, are:

1. Whether the PERMANENT INJUNCTION ORDER in its modified form entered by trial court, and affirmed by the Appellate Court of Illinois, First District, violates Mother's Federal Constitutional rights. [1]

2. Whether the circumstances justified the entry of the Modified Per-

[1] The Injunction prevents Mother from seeing or talking to Son permanently in any practical manner.

manent Injunction Order, in its modified form.

3. Whether the Permanent Injunction Order, both in its original and modified forms, should be voided because of its non-compliance with State and Federal law.

4. Whether the Appellate Court of Illinois, First District, abused its discretion by affirming trial court's entry of the modified Injunction.

5. Whether the Appellate Court severely misapplied the Illinois Domestic Violence Act of 1986, thereby violating Mother's Federal Constitutional rights.

6. Whether the Appellate Court of Illinois, First District, abused its discretion by not ruling on all basic issues of grave importance; namely (1) a parent's right to communicate with an adult child; (2)

if a parent has a right to investigate a report of an adult child's violent death or injury.

(b) The parties to the proceeding are:

1. JEAN ROSENBAUM, Mother, the Defendant in trial court, Appellant in the Appellate Court, Petitioner in the Illinois Supreme Court, also the Petitioner in the U. S. Supreme Court, who has acted Pro Se throughout.

2. RICHARD ROSENBAUM, Son, joint-Plaintiff in trial court, joint-Appellee in Appellate Court, and joint-Respondent in the Illinois Supreme Court and in the U. S. Supreme Court.

3. ANN P. (PHARMAKIS) ROSENBAUM, Wife of RICHARD, joint-Plaintiff in trial court, joint-Appellee in Appellate Court, joint-Respondent both in the Illinois Supreme Court and in the

U. S. Supreme Court. She is the daughter-in-law of Mother, and has not appeared once from the inception of the court proceedings, although all documents still bear her name.

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(d) The OPINION entered by the Appellate Court of Illinois on May 23, 1989, is officially reported as Rosenbaum v. Rosenbaum (1st Dist. 1989), 184 Ill. App. 3d 987, 541 N.E. 2d 872.

(e) Grounds for jurisdiction, under which jurisdiction of this Court is invoked, are:

(i) The OPINION entered by the Appellate Court of Illinois, First District, was entered on May 23, 1989 (Appendix, pp. A-(11-12)). Its companion MODIFIED OPINION was entered July 25, 1989, Nunc Pro Tunc May 23, 1989 (Appendix, pp. A-(13-25)). The OPINIONS affirmed the trial court modification of the Permanent Injunc- Order (Appendix, pp. A-(1-4); A-(7-8)).

(ii) The Appellate Court denied Mother's PETITION FOR REHEARING in its Order entered June 21, 1989 (Appen-

dix, p. A-(26)). The last Order entered by the Supreme Court of Illinois was its denial of Mother's motion for leave to file a motion for reconsideration of order denying petition for leave to appeal, entered November 15, 1989, (Appendix, p.A-(30)), the actual denial of the petition for leave to appeal having been entered on October 5, 1989 (Appendix, p. A-(29)).

(iii) Not applicable.

(iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari, is:

> "28 U.S.C.A. §1257(a). Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari ..... where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, or the treaties or statutes of .... the United States."

(f) The constitutional provisions involved are United States Constitution, Amendments I, V, VIII, IX, X and XIV, the applicable portions of which are set forth following:

> AMENDMENT I. "Congress shall make no law ..... abridging the freedom of speech .... or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."
>
> AMENDMENT V. "No person ..... shall be deprived of life, liberty or property without due process of law ....."
>
> AMENDMENT VIII. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
>
> AMENDMENT IX. "The enumeration in the Constitution, of certain rights, shall not be construed to disparage others retained by the people."
>
> AMENDMENT X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

AMENDMENT XIV. "..... No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The main Illinois Statute involved is the Illinois Domestic Violence Act of 1986, Ill. Rev. Stat. (1987), Ch. 40, Pars. 2311.1-2312.27, which the Appellate Court uses extensively in its OPINION for justification of its decision. Mother also cited parts of the Act to rebut the OPINION in her timely-filed PETITION FOR REHEARING. A few of the pertinent portions of the Act appear in the Appendix hereto, as follows:

Sec. 2311-3(1) .....A-(31-32)

Sec. 2311-3(8) .....A-(34)

Sec. 2312-1 .....A-(33)

Sec. 2312-14(14)(c)(1) .A-(35)

Sec. 2312-14(14)(d) ....A-(36)

Sec. 2312-21 .....A-(36-37)

(g) Statement of the Case, with Facts.

In 1985, when Mother attended an event given by a political organization, a member appeared and loudly announced that Mother's son, RICHARD, had been found shot and dumped in Lake Michigan. Everyone was horrified, and shortly thereafter, not having the son's home telephone number or access to his home, she telephoned his office. She could not talk to him or see him; nor did she receive a return telephone call. Meanwhile, she received a new report that Richard was alive, but had lost several limbs. She telephoned attorney EDWARD A. BERMAN, who was handling a divorce case RICHARD's father had filed against her (which she was strongly resisting), and asked

him to arrange a brief appointment in his office with RICHARD, so Mother could reassure herself of his condition. Instead, shortly thereafter, a COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES was filed against her by the Plaintiffs, through Attorney Berman. The Complaint was signed by the attorney alone.

In Mother's Answer to the Complaint, she explained her belief that the Son was copying his Father's behaviour, Father having refused to talk to or see Mother for a long time.

2/_____

The young couple, married for over 11 years, have never invited Mother into their home, nor has ANN ever voluntarily acknowledged any present Mother sent. Father has gifted ANN with a fur coat, and loaned Son thousands of dollars to buy a proper "condo" home for ANN. Mother visited ANN only once at her office, to see if she received her $100 anniversary present, and was threatened by her. Mother's attempts to reach the daughter-in-law by phone had been futile.

Plaintiffs received a temporary restraining order against Mother, which was later replaced with a Permanent Injunction Order entered September 30, 1985. The Order, although restraining Mother from contacting the children either in-person or verbally, in Pars. 4 and 5 thereof required Son to briefly telephone Mother three times a year, and see her for a short visit one time a year, (Appendix, A-(1-4)).

On March 3, 1987, plaintiffs filed a MOTION TO MODIFY AND VACATE PERMANENT INJUNCTION ORDER, in an attempt to modify or vacate Pars. 4 and 5, because Son "found it unacceptable and intolerable" to telephone Mother (for one minute only, three times a year)!

In her ANSWER, Mother informed the Court (1) that the injunction case was closely related to the divorce case

RICHARD's Father had filed against her through Attorney Berman; (2) that Plaintiffs were currying favor from Father, who was left in control of approximately 90 per cent of the marital property by the Courts; (3) that Mr. Berman had filed the instant suit instead of arranging the short meeting with Son for which she asked when word of his harm reached her; (4) that an unknown third party might be wielding influence over Son; (5) that Mother had offered, through Attorney Berman, to sign a compromise agreement with Son, but she believed the message had NOT been relayed; (6) that although Mother had written RICHARD, as the Injunction Order allowed, the letter had not been picked up from the post-office, etc. The ANSWER also contained Mother's AFFIDAVIT describ-

ing Attorney Berman's unusual behaviour when Mother and Son met in his office, and his threatening manner toward both. She described her son's confidences to her after they left, and the menacing stranger who suddenly appeared on the lobby floor.

When the Court denied Plaintiffs' MOTION TO MODIFY AND VACATE, Attorney Berman filed a motion asking for reconsideration of this denial, because RICHARD "has no feeling and cannot communicate" with his Mother, signing it himself. Mother's ANSWER reiterated her belief that Attorney Berman was using the injunction case to "trip her up" in the related divorce case; and that the case, at law, required a change in facts before the injunction could be modified, which had not taken place. She asked that if the Court

modified the injunction, that in-increased contacts with Mother be required of Son. Mother later filed for discovery, asking for dental and medical records of Plaintiffs because of possible physical intimidation toward them, and for financial records to learn who might be the "power" behind the scenes influencing them. She filed another Affidavit, describing unknown gentlemen who suddenly appeared in an anteroom when Attorney Berman and Mother were there. They stated their investigation revealed that Mr. Berman was the main investor in a Las Vegas gambling casino of questionable reputation. Judge O'Brien then denied totally Mother's requests for discovery, and vacated Pars. 4 and 5 of the Permanent Injunction Order, now making it impossible for Mother ever

to see or talk to her own children in any practical manner. The modification of the Permanent Injunction Order was affirmed by the Appellate Court, upon Mother's appeal.

The following matters appear in the Report of Proceedings, (a part of the official Record on Appeal).

1. Mother told trial court, that she was informed in an unusual way: when Son was very young and living with his Father, someone got control of him by getting him intoxicated and giving him a lot of contracts to sign. He signed them, thinking it was a joke, and he is held to these contracts that might involve a monstrous sum, etc. He must, therefore, do as he is told by some unknown party. Gambling or prostitution may be involved, and there might also be an unusual busi-

ness reason why he has filed this suit. Mother could not get to the bottom of situation with all discovery denied her. She expressed her belief that Plaintiff ANN might also be involved in some way.

2. The Court was informed that RICHARD's Father, she had unofficially been told recently, whose behaviour Son has used as his model, was in an airplane that flew a distance through an atomic cloud, and probably had been subtly impaired. The episode had been kept "top-secret" and RICHARD's behaviour might be the by-product of this.

3. Father confessed to Mother just recently he had accumulated unrevealed marital funds with the aid of Son and Son's business-financial education. Father himself may be intimidating Son with a threat of loss of financial backing if he does not behave as Dad

orders.

4. Appellate Court was told that RICHARD himself may have suffered damage to his judgment when he performed a top-secret mission involving nuclear radiation. Mother asked appeal court for a Prehearing Conference to discuss these matters, but it was denied.

(h) The Federal questions were early raised in the lower Courts, which never ruled on them explicitly, as follows:

a) Amendment I. The violation of Mothers right to free speech was first raised in trial court in 1985 in a MOTION TO STRIKE AND DISMISS COMPLAINT FOR INJUNCTIVE RELIEF (R. C.40), which was a part of the Record before the Appellate Court. The issue was dis-

3/ Record on Appeal numbers preceded by a "C" refer to the trial court record.

cussed in Mother's Appellate Brief, page 25, filed in 1988; Appellate Court left the issue untouched in its OPINION, stating (A-(25)) --

"Since we find defendant's remaining claims of error to be irrelevant to the issues in this case, we need not address them."

The Court will note that trial court entered the Permanent Injunction Order in 1985 after the entry of Constitutional issuesby Mother.

b) **Amendments V, XIV.** Mention appears in DEFENDANT's ANSWER TO PLAINTIFFS' MOTION TO MODIFY PARTS OF PERMANENT INJUNCTION ORDER (R. C.63) filed in 1985, and Plaintiffs' Motion was then denied by trial court, (R. C. 73). The discussion involving the violation of Mother's Constitutional right of equal protection of law under Amendment XIV appears on page 27 of her Appellate Brief (1988).

c) Amendment VIII. This Amendment was first raised in the Supreme Court of Illinois in Mother's MOTION FOR RE-CONSIDERATION OF DENIAL OF PETITION, but the Court denied her accompanying Motion for Leave to file the Motion (A-(30)).

d) Amendment IX. The Amendment was cited in Mother's MOTION TO STRIKE AND DISMISS COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES, filed in 1985, but nevertheless the Permanent Injunction Order was entered. It was discussed additionally on page 27 of Mother's Appellate Brief filed in 1988.

e) Amendment X. The Amendment was also cited in Mother's MOTION TO STRIKE AND DISMISS COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES filed in 1985, and further cited on page 27 of Appellate Brief of Mother filed in

1988, but apparently ignored by both Courts.

(i) Not applicable; no Federal Court was involved.

(j) ARGUMENT.

There are several special and important reasons why review on writ of certiorari should be granted, as follows:

1. The state court of last resort; namely, the Appellate Court of Illinois, First District, Second Division (the Supreme Court of Illinois denied the petition for appeal), has decided important questions of Federal law by apparently determining that they are of no importance and, therefore, not ruling on them! It then entered a decision that conflicts with applicable decisions of the Supreme Court of United States. The Supreme Court has said in Moore v. City of East

Cleveland (1977), 431 U. S. 494, 503, 97 S.Ct. 1932:

> "A host of cases .... have consistently acknowledged a private realm of family life which the State cannot enter ....
>
> "Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."

In Schneider v. Irvington (1939) 308 U. S. 147, 160, 60 S.Ct. 146, the Supreme Court ruled that under the United States Constitution, the freedom of speech secured by the First Amendment against abridgement by the United States, is similarly secured to all persons by the Fourteenth Amendment against abridgement by a State.

The Appellate Court has ignored the foregoing principles, affirming a Permanent Injunction that prevents Mother from seeing or talking to her children for the rest of her life! To justify this inequitable decision, the Court

seriously "bent out of shape" the Illinois Domestic Violence Act of 1986, Ill. Rev. Stat. (1987), Ch. 40, pars. 2311-1 - 2312.27. The stated purpose of the Act appears in Sec. 2311-2, that says:

> "Purposes; This Act shall be liberally construed and applied to promote its underlying purposes, which are to:
>
> (1) Recognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conductive to healthy childhood development;"

The Appellate Court has erroneously considered the inquiry Mother made about Son through his office a "serious crime." At the same time, although the Court recognized the issue when stating --

> "The issue raised herein involves the ordering of an adult child to communicate with and visit a parent, and the enjoining of a parent from communicating with an adult child except by mail. We do not believe that such matters have been addressed

> heretofore in Illinois, and we know of no law under which the trial court may so order an adult child." (See Appendix (A-(20)),

it did not explicitly rule on the issue of Mother's Constitutional right to "free speech," etc. being violated, Amendment I, Amendment XIV. Nor did it rule on the issues presented - if a parent has the right to investigate a report about a grown-child's violent death or injury, or the enjoining of a parent.

The appeal court, although quoting the Act, does not require any findings as to nature, frequency, severity, pattern and consequences of respondent's past abuse of petitioner, etc., as specified by Sec. 2312-14(14)(c)(1) of the Act. It did not try to enforce the "balance of hardship" clause, as required by Sec. 2312-14(14)(d) of the Act, or 2312-21.

The Appellate MODIFIED OPINION states that although the Domestic Violence Act

was not cited by Plaintiffs, etc. (Appendix, A-(21-22)), it would not vacate the Permanent Injunction because Plaintiffs could refile! It does not attempt fair treatment of both Plaintiffs and Defendant, and bases its decision improperly on prospective acts that have not happened, with severe penalty to Mother. This denies her due process and equal protection of law under Amendment XIV, and her other Constitutional protections under Amendments IX and X. It also imposes on her a "cruel and unusual punishment", forbidden by Amendment VIII.

It is apparent that the circumstances did NOT justify the entry of the PERMANENT INJUNCTION ORDER, either originally or in its modified form, and it should be voided, which the Appellate Court refuses to do, because another action might be filed, etc!

Also, it is quite likely that the lower appeal court severely misapplied the Illinois Domestic Violence Act of 1986, and that it abused its discretion by not specifically ruling on the basic issues of importance; namely,

"(1) A parent's right to communicate with an adult child.

"(2) If a parent has a right to investigate a report of an adult child's violent death or injury."

2. The Appellate Court of Illinois, the State Court of last resort, has, in effect, decided a Federal question in such a way that conflicts with the decision of another State court. The Appellate Court has affirmed the modification of a Permanent Injunction Order, making it considerably stronger against Mother's family rights, whereas a Florida decision, Paul's Drugs, Inc. v. Southern Bell Telephone & Telegraph Company (1965, Fla. App.

D. 3, 175 So. 2d 203, 206, determined:

> "A perpetual injunction is unknown to the law, and an attempt to impose such a sanction is an abuse by the court of its equity powers."

pertaining to Amendment VIII, in Alston v. Coughlin (S.D. N.Y. 1987), 668 F. Supp. 822, 826, the Court stated that the Constitutional prohibition of cruel and unusual punishment includes punishments which, although not physically barbarous, involve unnecessary and wanton infliction of pain, or are grossly disproportionate to severity of crime. The foregoing statement is totally on point with the instant Rosenbaum case.

In conclusion, Mother cites the case of Board of Regents of State Colleges v. Roth (Wis. 1972), 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548, that says:

> "Where a person's good name, reputation, honor or integrity is at

> stake because of what the government is doing to him (her), notice and an opportunity to be heard are essential."

The Court's attention is also called to the fact that although the Illinois Domestic Violence Act of 1986 likewise protects Mother from mistreatment by a family member, Ill. Rev. Stat. (1987), Ch. 40, Secs. 2311-3(8), 2312-1, this fact was not heeded by the Appellate Court of Illinois, First District, that initiated the use of the Act in this case for the benefit of the Plaintiffs.

WHEREFORE, for the foregoing reasons and others, including the fact that parents of grown children whom they love dearly, are in need of more effective legal guidelines in facing their family problems, than those used by the Appellate Court of Illinois, First District, it is prayed

that this PETITION FOR WRIT OF CERTIORARI to the APPELLATE COURT OF ILLINOIS, First District, be allowed.

Respectfully submitted,

Jean Rosenbaum

JEAN ROSENBAUM, Petitioner, acting Pro Se. *

* See copy marked "Notarized Copy" for original signatures.

APPENDIX.

A P P E N D I X

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, CHANCERY DIVISION.

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs,	)	C O P Y
vs.	)	NO. 85 CH 5526
JEAN ROSENBAUM, Defendant.	)	ENTERED SEPTEMBER 30, 1985

PERMANENT INJUNCTION ORDER.

THIS CAUSE coming on for hearing on the complaint for injunctive relief and damages filed by plaintiffs, Richard Rosenbaum and Ann P. Rosenbaum, and the answer thereto of defendant, Jean Rosenbaum, mother of Richard Rosenbaum and mother-in-law of Ann P. Rosenbaum, and the Court having heard evidence including the testimony of Richard Rosenbaum, plaintiff, and Jean Rosenbaum, defendant, and examining written evidence, and having heard

arguments of counsel and defendant, pro se, and being fully advised in the premises;

DOTH FIND, that a permanent injunction shall issue in favor of plaintiffs and against defendant; that plaintiffs have no adequate remedy at law;

IT IS THEREFORE ORDER AND ADJUDGED that:

1. Defendant is temporarily and permanently enjoined from verbally contacting plaintiffs, except as provided herein below.

2. Defendant is temporarily and permanently enjoined from telephoning the plaintiffs at their places of employment or home and from visiting either of them at their places of employment or home.

3. Defendant may communicate with plaintiffs by written correspondence

and plaintiff Richard Rosenbaum shall supply defendant with any new home address he may incur for the forwarding of mail, by six months thereafter.

4. Plaintiff Richard Rosenbaum shall telephone defendant no less than once every three months, which telephone conversation by Richard shall extend for no less than one minute.

5. At least once each year, starting on or about September 26, 1986, Richard Rosenbaum and defendant shall meet in person at a neutral place to be agreed upon, with arrangements to be made through Edward A. Berman or one of defendant's other children,

6. This permanent injunction shall issue for good cause shown and without bond.

7. The Court retains jurisdiction for purpose of enforcing the provi-

sions contained herein.

JUDGE BENJAMIN MACKOFF.

September 30, 1985.

Attorney: Edward A. Berman.
Berman, Roberts & Kelly.
35 East Wacker Drive.
Suite 3400.
Chicago, Illinois 60601.
345-4585 (312)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, CHANCERY DIVISION.

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs, vs. JEAN ROSENBAUM, Defendant, acting Pro Se.	)	C O P Y ENTERED: JUNE 8, 1987. NO. 85 CH 5526

ORDER

This cause coming on to be heard this 8th day of June, 1987, upon Plaintiffs' MOTION TO MODIFY AND VACATE PERMANENT INJUNCTION ORDER OF SEPTEMBER 30, 1985, and JEAN ROSENBAUM's ANSWER thereto, and the Court being advised fully in the premises;

IT IS HEREBY ORDERED:

The MOTION TO MODIFY AND VACATE PERMANENT INJUNCTION ORDER OF SEPTEMBER 30, 1985 filed by Plaintiffs, RICHARD ROSENBAUM, and ANN P. ROSEN-

BAUM, is hereby denied.

ENTERED: June 8, 1987

JUDGE T. O'BRIEN

Jean Rosenbaum, Pro Se.
1354 West Greenleaf Street.
Chicago, Illinois 60626.
973-6047 (312)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, CHANCERY DIVISION.

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs, vs. JEAN ROSENBAUM, Defendant, acting Pro Se.	C O P Y ENTERED OCTOBER 26, 1987 T. O'BRIEN 85 CH 5526

ORDER

This cause coming on upon motion to reconsider and other motions, and the court having heard arguments of counsel and being fully advised,

IT IS ORDERED (1) that plaintiff's motion to reconsider is denied; (2) defendant's motions and notices for production of documents and interrogatories are denied and stricken; (3) defendant's motion for rule to show cause is denied, and the paragraphs 4 and 5 of the Permanent Injunction Order of September

30, 1985, are vacated and held for naught.

October 26, 1987

THOMAS O'BRIEN (Judge)

Attorney: Berman, Roberts & Kelly.
35 East Wacker Drive, #3400.
Chicago, Illinois 60601.
346-4585.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, CHANCERY DIVISION.

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs, v. JEAN ROSENBAUM, Defendant, acting Pro Se.	C O P Y ENTERED DECEMBER 10,1987, T. O'BRIEN. NO. 85 CH 5526

ORDER

THIS CAUSE coming on upon the defendant's motion to vacate or modify order entered on October 26, 1987 or to vacate the permanent injunction order of October 30, 1985, together with defendant's memorandum of additional law, and the Court having examined the motion and the memorandum, and having heard arguments of counsel, and being fully advised in the premises,

IT IS ORDERED that the motion of JEAN ROSENBAUM, defendant, to vacate

or modify the order of October 26, 1987 or in the alternative to vacate the permanent injunction order entered September 30, 1985, be and the same is hereby denied.

ENTERED December 10, 1987.

T. O'BRIEN, Judge.

BERMAN, ROBERTS & KELLY,
Attorney for Plaintiffs.
35 East Wacker Drive, #3400.
Chicago, Illinois 60601.
346-4585.

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT.
May 23, 1989
Second Division

88-0217

C O P Y

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs-Appellees,	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
v.	THE HONORABLE THOMAS J. O'BRIEN, JUDGE PRESIDING.
JEAN ROSENBAUM, Defendant-Appellant, acting Pro Se.	

OPINION

NOTE: The original Opinion was entered by the Appellate Court of Illinois, First District, on May 23, 1989. It contained a serious error in its quotation of the Permanent Injunction Order and, therefore, a MODIFIED OPINION was entered July 25, 1989, Nunc Pro Tunc May 23, 1989.

The MODIFIED OPINION is identical to the original OPINION in every

way with the exception of the error correction.

In the interest of brevity, only the MODIFIED OPINION is presented herewith, as it is the corrected OPINION.

See pages A-(27), A-(28) for correction Order.

Second Division
July 25, 1989
(Nunc pro tunc
May 23, 1989)

C O P Y

88-0217

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs-Appellees, v. JEAN ROSENBAUM, Defendant-Appellant.	)APPEAL FROM THE)CIRCUIT COURT OF)COOK COUNTY)THE HONORABLE)THOMAS J. O'BRIEN,)JUDGE PRESIDING.

MODIFIED OPINION.

JUSTICE SCARIANO delivered the opinion of the court:

The defendant, Jean Rosenbaum, appeals from an order of the circuit court of Cook County vacating portions of a permanent injunction order requiring the plaintiff Richard Rosenbaum, her son, to telephone her no less than once every three months and to meet her in person at least once each year.

This cause originated on the complaint

of Richard Rosenbaum and Ann P. Rosenbaum, his wife, seeking a permanent injunction against the defendant, his mother, to restrain her from contacting the plaintiffs by telephone at their home or at their places of employment, and from contacting any personnel at their places of employment.

After an evidentiary hearing on the complaint and pro se answer, the trial court entered a permanent injunction order on September 30, 1985, in favor of the plaintiffs and against defendant:

> "1. Defendant is temporarily and permanently enjoined from verbally contacting plaintiffs, except as provided herein below.
>
> "2. Defendant is temporarily and permanently enjoined from telephoning the plaintiffs at their places of employment or home and from visiting either of them at their places of employment or home.
>
> "3. Defendant may communicate with plaintiffs by written correspondence and plaintiff Richard Rosenbaum shall supply defendant with any new home address he may incur for the forwarding of mail, by six months thereafter.

"4. Plaintiff Richard Rosenbaum shall telephone defendant no less than once every three months, which telephone conversation by Richard shall extend for no less than one minute.

"5. At least once each year, starting on or about September 26, 1986, Richard Rosenbaum and defendant shall meet in person at a neutral place to be agreed upon, with arrangements to be made through Edward A. Berman or one of defendant's other children.

"6. This permanent injunction shall issue for good cause shown and without bond.

"7. The court retains jurisdiction for purposes of enforcing the provisions contained herein."

A month later the plaintiffs filed a motion to delete paragraphs four and five of the injunction order, but their motion was denied. On March 3, 1987, the plaintiffs filed a motion to vacate the permanent injunction order alleging that the terms and conditions of the order requiring plaintiff Richard to call the defendant were unacceptable and intolerable. This motion

was also denied on June 8, 1987, and one month later plaintiffs filed a motion to reconsider that denial alleging that plaintiff Richard was totally unwilling to allow the defendant to become a part of his life in any way; that "it is not within the province of the Court to regulate all the behavior of individuals, but the injunction seeks to do this"; that compliance with the order is not feasible and is effectively meaningless because "the calls every three months will not fulfill the constant suspicion of the defendant that her son is being or has been harmed in some way"; and that equity does not command that a "court have jurisdiction to supervise feelings between adult parties by imposition of arbitrary demands."

The defendant filed a pro se answer that equity requires a change of facts to revoke or modify a permanent injunc-

tion; that as a parent of plaintiff Richard she has a common law right to see him; that it is not unreasonable behavior for her to desire to see her son; and that since he does not respond to her letters, it is not a proper answer to the problem. Defendant then filed motions for the production of documents and interrogatories directed to plaintiff Richard. After holding a hearing on all motions, on October 26, 1987, the trial court entered an order denying plaintiff's motion to reconsider and denying defendant's motions for discovery, but it vacated paragraphs four and five of the permanent injunction order of September 30, 1985. Defendant filed a timely motion to vacate or modify the latter order or in the alternative to vacate the permanent injunction order entered on September 30, 1985. The motion was denied and defendant now appeals.

Defendant contends that (1) pursuant to section 102(2) of the Marriage and Dissolution of Marriage Act (Ill. Rev. Stat. 1985, ch. 40, par. 102(2)), the permanent injunction was entered in accordance with the legislative intent to safeguard family relationships and that the statute did not set any age limits on that goal; (2) the injunction order in its modified form violates her State and Federal constitutional rights to exercise freedom of speech, citing Santosky v. Kramer (1962), 455 U.S. 745, 71 L. Ed. 2d 599, 102 S. Ct. 1388, and Moore v. City of East Cleveland (1977) 431 U.S. 494, 52 L. Ed. 2d 531, 97 S. Ct. 1932; (3) the injunction order in its modified form does not comply with the provisions of section 11-101 of the Illinois Code of Civil Procedure (Ill. Rev. Stat. 1987, ch. 110, par. 11-101) because it failed to set forth the rea-

sons for its entry; (4) the trial court abused its discretion by denying her right to discovery, her right to cross-examination into the plaintiffs' motives for their action, her right to testify as a witness, and failing to consider that despite the fact that plaintiff Richard said he wanted nothing to do with the defendant, he did not waive inheritance rights to her estate; (5) the plaintiffs failed to legally justify the injunction order by alleging and showing actual and substantial injury to them as required by Barco Manufacturing Co. v. Wright (1956), 10 Ill. 2d 157, 139 N.E. 2d 227, or that there was any urgency in the situation or irreparable harm to them without modification of the permanent injunction order as required by Sadat v. American Motors Corp. (1984), 104 Ill. 2d 105, 470 N.E. 2d 997;

and (6) she is entitled to and justified in receiving costs from the plaintiffs because of the litigation of this matter.

The issue raised herein involves the ordering of an adult child to communicate with and visit a parent, and the enjoining of a parent from communicating with an adult child except by mail. We do not believe that such matters have been addressed heretofore in Illinois, and we know of no law under which the trial court may so order an adult child.

However, the legislature has recognized in the Domestic Violence Act of 1986 (the Act) (Ill. Rev. Stat. 1987, ch. 40, pars. 2311-1 - 2312-27) that courts do have a role in resolving some family disputes other than those we encounter, for example, in our domestic relations and juvenile laws, none of which is pertinent here. The Domestic Violence Act provides that one being harassed,

defined in part as repeated "telephoning (of) petitioner's place of employment, home or residence," by a family member may file a petition for an order of protection. (Ill. Rev. Stat. 1987, ch. 40, pars. 2311-3(4)(ii), 2312-1, 2312-14.) In granting relief, a court may enter "such injunctive relief as may be necessary or appropriate to prevent further abuse (or harassment) *** if supported by the balance of hardships." Ill. Rev. Stat. 1987, ch. 40, par. 2312-14(b)(3).

While this statute was enacted after the present action was commenced, it was in effect at the time the order was entered. In the instant case, plaintiffs did not seek and the trial court did not enter a protective order; indeed, at no time did plaintiffs cite the Act or its predecessor (Ill. Rev. Stat. 1985, ch. 40, pars. 2301-1 - 2303-5, 2305-1) in their pleadings or to the

Judge. However, were this court to vacate the injunction, on the basis that such a family dispute is not justiciable absent some legislative enactment invoked by them, plaintiffs could refile their action under the Act; accordingly, to conserve judicial resources and promote efficiency, we will consider whether the injunction, as modified, is proper under the Act. We find that it is.

The Act grants the trial judge the authority to order "appropriate" relief to prevent harassment. Enjoining defendant from telephoning or "verbally" contacting plaintiff Richard, while allowing her to communicate with him through written correspondence, is clearly within the trial court's authority under the Act. (Ill. Rev. Stat. 1987, ch. 40, pars. 2312-14 (b)(1), (13).) Additionally, requiring plaintiff son to supply defendant with any new

home address, so that she can write to him, is appropriate under the facts of this case. However, requiring plaintiff Richard to call and visit his mother is not "necessary or appropriate to prevent further (harassment)" (Ill. Rev. Stat. 1987, ch. 40, par. 2312-14(b)(13)); accordingly, such an Order is not authorized by the Act. Nor would it be proper under any other Illinois law.

A similar issue was decided in Stanley F. Schmidt v. Janet Schmidt (1983), 313 Pa. Super. 83, 459 A.2d 421. There, the court held that an adult handicapped woman who had not been adjudicated incompetent, "enjoys many of the same rights and privileges enjoyed by other adult citizens," including

> "a constitutionally protected freedom of choice to make certain basic decisions regarding marriage, procreation, family life and privacy. See e.g.: Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); Stanley v. Illinois, 405

U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 340 (1972); Griswold v. Connecticut, 381 U.S. 390, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). This freedom of choice, it would seem, should include the same right which an adult has to refuse to visit a parent, *** as well as freedom to make important decisions regarding personal preferences and associates." 459 A.2d 421, 422-23.

In the instant case, plaintiff son has chosen not to keep in touch with his mother. This is a sad and unfortunate situation; however, it takes more than a mere secular tribunal to command filial devotion. We agree with the trial court that paragraphs four and five of the permanent injunction order should be vacated.

With regard to defendant's argument that the injunction order in its modified form does not conform with section 11-101 of our Code of Civil Procedure Ill. Rev. Stat. 1987, ch. 110, par. 11-

101), providing for temporary restraining orders, we note that the order appealed from is a permanent injunction, and thus that section is not applicable to this case. Since we find defendant's remaining claims of error to be irrelevant to the issues in this case, we need not address them.

For the foregoing reasons, the judgment of the circuit court of Cook County vacating paragraphs four and five of the permanent injunction order is affirmed.

AFFIRMED.

HARTMAN and DIVITO, J. J., CONCUR.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs-Appellees, v. JEAN ROSENBAUM, Defendant-Appellant, acting Pro Se.

C O P Y

NO. 88-0217

ORDER

Defendant-Appellant's Petition for Rehearing is hereby denied.

ALLEN HARTMAN, J.

ANTHONY SCARIANO, J.

GINO L. DiVITO, J.

DATED: June 21, 1989.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD ROSENBAUM and ANN P. ROSENBAUM, Plaintiffs-Appellees,	)	C O P Y (Order entered July 13, 1989.)
v.	)	NO. 88-0217
JEAN ROSENBAUM, Defendant-Appellant, acting Pro Se.	)	

ORDER

This cause coming before the court on defendant's motion for reconsideration of denial of petition for rehearing, or as a lesser alternative, motion for correction of opinion and the court having duly considered same,

IT IS HEREBY ORDERED that the court's quotation of paragraph 2 of the trial court's order, in the opinion issued May 23, 1989, herein be corrected to read as follows:

"2. Defendant is temporarily and permanently enjoined from telephoning

the plaintiffs at their places of employment or home and from visiting either of them at their place of employment or home."

IT IS FURTHER ORDERED that the remainder of defendant's motion be and the same is hereby denied.

ALLEN HARTMAN, J.

ANTHONY SCARIANO

GINO L. DiVITO, J.

ORDER ENTERED: July 13, 1989

DATED: July 13, 1989

ILLINOIS SUPREME COURT
Supreme Court Building
Springfield, Illinois 63706
(217) 782-2035

October 5, 1989

Mrs. Jean Rosenbaum
1354 West Greenleaf Street
Chicago, Illinois 60626 No. 69012

No. 69012 - Richard Rosenbaum, et al., respondents, v. Jean Rosenbaum, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Stamos, J., took no part.

The mandate of this Court will issue to the Appellate Court on October 27, 1989.

(NO SIGNATURE.)

Juleann Hornyak, Clerk.

No. 69012

IN THE SUPREME COURT OF ILLINOIS

Richard Rosenbaum, et al., Respondents	)	C O P Y
v.	)	Appellate Court, First District 1-88-0217
JEAN ROSENBAUM, Petitioner	)	

ORDER

This matter has come for consideration upon the motion by petitioner, pro se, for leave to file a motion for reconsideration of order denying petition for leave to appeal, all parties being fully advised in the matter herein:

IT IS HEREBY ORDERED that the motion is denied.

STAMPED: FILED
NOVEMBER 15, 1989
SUPREME COURT CLERK

EXCERPT FROM ILLINOIS DOMESTIC VIOLENCE ACT, ILL. REV. STAT. (1987), CH. 40, SEC. 2311.3 (used by Court in its OPINION).

2311-3. Definitions

§ 103. Definitions. For the purposes of this Act, the following terms shall have the following meanings:

(1) "Abuse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.

(2) "Adult with disabilities" means an adult prevented by physical or mental disability or advanced age from taking appropriate action to protect himself or herself from abuse by a family or household member. A person may be an adult with disabilities for purposes of this Act even though he or she has never been adjudicated an incompetent adult. However, no proceeding may continue on behalf of an adult with disabilities over that adult's objection, unless such proceeding is approved by his or her legal guardian, if any.

(3) "Family or household members" includes spouses, former spouses, parents, children, stepchildren and other

(Continued on next page.)

persons related by blood or marriage, persons who share or formerly shared a common dwelling and persons who have or allegedly have a child in common.

(4) "Harassment" means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

(i) creating a disturbance at petitioner's place of employment;

(ii) repeatedly telephoning petitioner's place of employment, home or residence;

(iii) repeatedly following petitioner about in a public place or places;

EXCERPT FROM ILLINOIS DOMESTIC VIOLENCE ACT, ILL. REV. STAT. (1987), CH. 40, SEC. 2312.1 (used by Court in its OPINION).

ARTICLE II

ORDERS OF PROTECTION

2312-1. Persons protected by this Act

§ 201. Persons Protected By This Act. Persons protected by this Act are:

(i) any person abused by a family or household member;

(ii) any minor child or dependent adult in the care of such person; and

(iii) any person residing or employed at a private home or public shelter which is housing an abused family or household member.

A petition for an order of protection may be filed only by a person who has been abused by a family or household member or by any person on behalf of a minor child or adult with disabilities abused by a family or household member. However, any petition properly filed under this Act may seek protection for any additional persons protected by this Act.

EXCERPT FROM ILLINOIS DOMESTIC VIOLENCE ACT, ILL. REV. STAT. (1987) CH. 40, SECS. 2311-3(8); 2312.1; (used in Mother's Appeal Brief).

Sec. 2311-3(8). "'Petitioner' may mean not only any named petitioner for the order of protection and any named victim of abuse on whose behalf the petition is brought, but also any other person protected by this Act."

Sec. 2312-1. "Persons protected by this Act are: (i) any person abused by a family or household member; (ii) any minor child or dependent adult in the care of such person; ...."

EXCERPT FROM ILLINOIS DOMESTIC VIOLENCE ACT, ILL. REV. STAT. (1987) CH. 40, SEC. 2312-14(14)(c)(1); (used in mother's appeal brief).

Sec. 2312-14(14)(c)(1). "Relevant Factors. Findings: (1) In determining whether to grant a specific remedy, other than payment of support, in an order of protection, the court shall consider relevant factors, including but not limited to the following, and shall make oral or written findings thereon: (i) the nature, frequency, severity, pattern and consequences of the respondent's past abuse of the petitioner or any family or household member, including the concealment of his or her location in order to evade service of process or notice;; any unauthorized physical violence by respondent; and the likelihood of danger of future abuse to petitioner or any member of petitioner's or respondent's family or household." .....

ILLINOIS DOMESTIC VIOLENCE ACT,

Secs. 2312-14(14)(d), 2312.21.

(Used in Mother's appeal Brief).

Sec. 2312-14(14)(d). "Balance of Hardships; Findings. If the court finds that the balance of hardships does not support the granting of a remedy governed by paragraph (2), (3), (9), (10) or (13) of subsection (b) of this Section, which do or may require such balancing, the court's findings shall also describe the manner in which the hardship to the abusive party if the remedy were granted would substantially outweigh the hardship to petitioner from denial of the remedy. If there would otherwise be no official record of the court's findings, those findings shall be in writing."

Sec. 2312-21. "Contents of Orders. (a) Any order of protection shall describe:

(1) Each remedy granted by the court, in reasonable detail and not by reference to any other document.

(b) An order of protection shall further state:

(continued)

Continued: Sec. 2312-21.

(1) The name of each petitioner that the court finds was abused by respondent, and that respondent is a member of the family or household of each such petitioner, and the name of each other person protected by the order, and that such person is protected by this Act. .....

(c) Any order of protection shall include the following notice, printed in conspicuous type: "Any knowing violation of an order of protection forbidding physical abuse, harassment, intimidation, interference with personal liberty or willful deprivation or granting exclusive possession of the residence or household is a Class A misdemeanor. ..... Any willful violation of any order is contempt of court. Any violation may result in fine or imprisonment."

STATE OF ILLINOIS)
, SS
COUNTY OF C O O K)

AFFIDAVIT

I, JEAN ROSENBAUM, being first duly sworn upon oath, depose and state I am the petitioner, acting Pro Se, in the aforestated cause, that I have read the foregoing ON PETITION FOR WRIT OF CERTIORARI to the APPELLATE COURT OF ILLINOIS, First District, including its APPENDIX by me subscribed, that I know the contents thereof, and the same is true in substance and in fact.

Jean Rosenbaum

JEAN ROSENBAUM, Petitioner, acting Pro Se.

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 30th day of December, 1989.

Sidney Barr

Notary Public

Jean Rosenbaum, Pro Se.
1354 West Greenleaf Street.
Chicago, Illinois 60626.
973-6047 (312).

"OFFICIAL SEAL"
SIDNEY BARR
Notary Public Cook County, Illinois
My Commission Expires Sept. 29, 1991

"OFFICIAL SEAL"
SIDNEY BARR
Notary Public Cook County, Illinois
My Commission Expires Sept. 29, 1991